

Resolution No. R-98-151

Industrial Revenue Bond Policy

A RESOLUTION FINDING THAT THE CITY OF WICHITA INTENDS TO ISSUE ITS INDUSTRIAL DEVELOPMENT REVENUE BONDS PURSUANT TO K.S.A. 12-1740 TO 12-1749~~d~~ INCLUSIVE, AS AMENDED, TO PROMOTE ECONOMIC DEVELOPMENT OF THE CITY AND ESTABLISHING POLICY, GUIDELINES, AND PROCEDURES FOR ISSUANCE OF SAID BONDS.

WHEREAS, the City Council of the City of Wichita, Kansas, has indicated a desire to be active in stimulation of economic growth of the city; and

WHEREAS, The City of Wichita is authorized by K.S.A. 12-1740 to 12-1749~~d~~ inclusive, as amended, to issue industrial development revenue bonds; and

WHEREAS, the City Council has determined that industrial development revenue bonds will be used to increase employment for the City of Wichita; and

WHEREAS, the City of Wichita industrial development revenue bonds are perceived to be of assistance in aiding financially the industrial and economic development of the city; and

WHEREAS, the City Council of the City of Wichita, Kansas, has established certain policy, guidelines, and procedures which must be satisfied in order for the City of Wichita industrial development revenue bonds to be issued.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS, that the following policy, guidelines, and procedures are and shall be adopted, met, and complied with regarding the issuance of City of Wichita industrial development revenue bonds.

Policy

The primary aim of industrial development revenue bond financing is to promote, stimulate and develop the general economic welfare of the City and region and not to facilitate change of ownership. Industrial development revenue bonds will be issued to those tenants who can demonstrate that:

1. A substantial employment increase will result from the improvements financed by the industrial development revenue bonds. The meaning of substantial employment will not contain a firm number of employees but will be considered for each issue and will depend on the nature of the product of the project or service and the amount of the bond issue;
2. The project may add significantly to the needed diversification of the economy or have an economic impact on a particular physical area of the community where economic assistance is needed (projects proposed for downtown Wichita may fall into this category of the policy);
3. The project will likely result in an economic growth potential and benefit to the community (e.g., the tenant shall be one with a substantial part of its total products and/or services being exported from the Wichita area or product items for local consumption that might add jobs and replace purchases now being made by Wichita citizens from outside the city); or,
4. The project will likely expand the type of job skills available to the job market in the community or utilize key skills of locally unemployed persons; and,
5. The project will not:
 - a. create an unfair advantage to one firm over other firms in the local market structure; or,
 - b. remove any existing property from the tax rolls, except as specifically contemplated in Section “4” of the Wichita Business Incentive Policy.
6. In all cases (other than cases of major manufacturing businesses excluded from the corporate limits by inclusion in industrial districts), prospective tenants seeking issuance of bonds, if not headquartered within the city, shall only be considered with respect to projects either located within the city limits, or as to which proceedings for annexation shall have been commenced prior to the issuance of the bonds.

Guidelines

A. Types of Industry:

The types of projects which will generally be considered for industrial revenue bonds will be those projects which are:

1. MANUFACTURING AND DISTRIBUTION FACILITIES – The City will consider financing a manufacturing or distribution facility, including machinery or equipment to be located on-site and used in the manufacturing process.

2. HOSPITALS, MEDICAL AND ASSISTED LIVING FACILITIES – The City will consider financing hospital projects and other medical care facilities, and assisted living facilities.

3. OFFICES – The City will consider financing office buildings that are:

- a. job intensive headquarters-type facilities;
- b. offices in conjunction with other authorized IRB projects; or
- c. in the downtown boundaries.

4. SERVICE COMPANIES – The City will consider financing service facilities.

5. HOUSING – Using a “Block Facing” concept, the City will consider financing developments within the downtown boundaries. The City will generally not consider financing for the acquisition of an existing housing facility, unless rehabilitation is a principal purpose of the proposed project. For the acquisition of an existing housing facility to qualify for IRB financing, rehabilitation costs must equal at least 20% of the cost of acquiring the facility.

6. DOWNTOWN DEVELOPMENT – Using a “Block Facing” concept, the City will consider financing all projects for development within the downtown boundaries of:

Kellogg on the south
Seneca on the west
Murdock on the north
Washington on the east

7. HOTELS AND MOTELS – Using a “Block Facing” concept, the City will consider financing hotels or motels within the downtown boundaries.

8. CHILD CARE FACILITIES – The City will consider financing child care facilities owned by an authorized and properly licensed applicant for IRB financing.

9. PARKING GARAGES – The City will consider financing parking garages when:
(a) said garages are considered to be an integral part of another project acceptable for IRB financing as contained in this policy; or (b) using a “Block Facing” concept, such parking garages are contained within the downtown boundaries.

10. SPECULATIVE FACILITIES AND BUILDINGS – The City will consider financing speculative facilities and buildings, in which the ultimate use has not been identified,

when constructed on land purchased from the City of Wichita and when the prospective developer can demonstrate the ability to guarantee payment of the bonds.

11. The City Council reserves the right to exempt any project from the above guidelines in the event circumstances exist to warrant such exemption.

12. The above guidelines are intended to encourage legitimate economic development proposals. These guidelines have been developed over a period of time and under varying economic environments. The City, therefore, encourages all who are considering major projects to contact the Economic Development Office to review their proposed projects in relation to existing and proposed future guidelines.

B. Tax Abatement:

The Wichita Business Incentive Policy adopted by the City Council in May of 1991 and revised April 21, 1998 (as the same may be from time to time amended) shall generally be applicable to requests for tax abatement in conjunction with a proposed IRB financing, unless specifically designated to apply solely to the grant of economic development tax exemptions under Section 13 of Article 11 of the Kansas Constitution (EDX exemptions).

C. Requirements for Submitting a Proposal:

Proposals submitted to the City should be in letter form and contain the following minimum information:

1. Names and addresses of all persons who would be obligated as either tenant or guarantor on the bond documents.
2. Names and addresses of the principal officers and directors of the requesting tenant.
3. A general description of the nature of the business of the requesting tenant and a list of the principal competition in the local market.
4. A general description of the proposed project or improvements.
5. The specific location of the proposed project (not a legal description).
6. A statement of the projected benefits to the City of Wichita.
7. The dollar amount of the bonds being requested.
8. A detailed breakdown of the proposed costs including an estimate of underwriting fees and other miscellaneous expenses.
9. The name and address of the proposed underwriters or an explanation as to how and when the underwriters will be selected.

10. An agreement to pay for the services of bond counsel to be selected by the City, which may, in appropriate circumstances, be the City's regular contract bond counsel. An attorney or firm of attorneys having an established attorney/client relationship with a prospective tenant may not serve as bond counsel in a financing involving such prospective tenant. Further, absent a formal written waiver by the City, the attorney or firm of attorneys representing the prospective tenant, the underwriter, or other private participants in a financing may not serve as bond counsel in such financing.

11. If any tax exemption is to be sought in connection with the proposed bond issue, all of the information required in the Wichita Business Incentive Policy, and a statement relative to an agreement to make payments in lieu of taxes shall be included as part of the request.

12. The applicants must indicate in the proposal that they are willing to make a payment to the City of administrative fees in an amount of \$2,500 per year, in arrears, for the life of the bond issue and, in addition, the applicants will agree to pay all city costs relative to the issuance of bonds, regardless or whether or not the bonds are actually approved and/or issued.

13. A brief statement relative to the effects of the proposed project on the ambient air quality of the City of Wichita and Sedgwick County.

14. Any other information which would be helpful or which is desired to be given to help determine the propriety of the City issuing the proposed bonds.

In addition to the letter of request, the following information and/or documents are required as part of the proposal:

1. A certified accounting audit of the last fiscal year's business of the prospective tenant prepared by an independent certified public accountant. Dependent on the period of time between the last certified audit and the date of the request for bonds, the City may require additional financial statements and records. Exceptions to this requirement may be made where:

- a. The prospective tenant is a new venture which has no operating history;
- b. The bonds are to be fully secured by bond insurance or a letter of credit, such that the purchasers are looking primarily to the financial status of the insurer or letter of credit provider rather than that of the prospective tenant; or,
- c. The bonds are to be privately placed with the prospective tenant, a parent, subsidiary or other affiliate of the prospective tenant, or a financial institution which has a substantial history as the regular financing lender of the prospective tenant's

operations and hence has substantial, ongoing familiarity with the prospective tenant's financial matters and status.

Further, where the prospective tenant's records have traditionally not been audited, and the bonds are offered and sold based on the financial strength of an affiliate which is unconditional Guarantor of the bonds, and which does maintain audited records, audited financial statements of such affiliate may be accepted in satisfaction of the audit requirement.

2. Bonds for relatively new proposed businesses will be considered upon complete submission of all information which might be relevant to the financial feasibility of the project, including feasibility studies, pro forma financial statements, history/experience and financial statements of principals of the proposed business, and a complete outline of the total project plan including retirement of debt service.

3. Any maps or diagrams necessary for a complete understanding of the proposed project and its location.

4. A statement from the underwriter that the underwriter will be willing to underwrite the bonds. If an underwriter has not been chosen at the time of the request, a statement of intent, subject to any usual terms or conditions between the underwriter and client, must be included from all of the underwriters under consideration.

PROCEDURES

A. Procedure for Requesting a Letter of Intent:

The procedure which will be required for submission, analysis, recommendation and action by the prospective tenant, city staff, and the City Council is as follows:

1. The proposal in content as required by this resolution shall be submitted by the prospective tenant to the Office of Economic Development, City of Wichita.

2. The proposal will be reviewed for the completeness of documents and information. If it is incomplete, the prospect will be immediately advised of the deficiencies and the proposal will be returned immediately in total.

3. In order to complete the process and allow adequate time for review by the financial, legal, and other staffs of the City, the proposal must be submitted in total and acceptable content not later than twenty-one calendar days prior to the date it is expected to be considered by the City Council.

4. Upon completion of the review process, the proposal will be forwarded for action by the City Council.

5. At least seven days prior to consideration for any proposal which includes a request for ad valorem tax abatement, bond counsel shall cause a Notice of Public Hearing to be published in the official City newspaper, giving notice of hearing on the request, and indicating the purpose, time and place thereof. In addition, bond counsel shall prepare and mail suitable notice letters signed by the City Clerk or Deputy City Clerk to properly notify the governing body of any city or county and any unified school district in which the property proposed for exemption is located.

6. Following approval of a proposal by the City Council, a “letter of intent to issue bonds” will be prepared by staff, and executed by the Mayor and the prospective tenant. The “letter of intent” will contain those conditions which are required to be met prior to the issuance of the bonds. These conditions typically include some or all of the following:

a. Negotiation of a Lease Agreement and preparation of an appropriate Bond Ordinance, which will ordinarily contain a provision pledging the financed property and net earnings therefrom as security for payment of the bonds, pursuant to K.S.A. 12-1744;

b. Execution of guarantees for the payment of the bonds (which, for the tenant, may be in the form of an unconditional guaranty incorporated in the Lease);

c. Agreement to pay all costs incurred by the City for processing the application and issuance of the bonds;

d. Agreement to enter into the City’s Administrative Service Fee Agreement providing for annual payments of \$2,500 each year for the time period in which the bonds are outstanding;

e. Agreement that, prior to the issuance of the bonds, the applicant will have an approved Equal Employment Opportunity/Affirmative Action Plan on file with the City;

f. Agreement to include the Lease provisions requiring the applicant to comply with the ordinances of the City, as then exist or as may thereafter be adopted, pertaining to civil rights and equal employment opportunity, as required by Section 2.12.950 of the Code of the City of Wichita;

g. If the project involves new construction, substantial renovation or landscaping, an agreement to provide the City with documented evidence that the

applicant used procedures, prior to the issuance of the bonds, that do not exclude qualified Minority-owned Business Enterprises (MBE) and Women-owned Business Enterprises (WBE) from serving as contractors, subcontractors, engineers, architects, suppliers and vendors on the bond-financed project;

h. If the project involves substantial new construction, or renovation or landscaping materially impacting water usage, an agreement that, prior to the issuance of the bonds, the applicant will have obtained approval from City staff of a proposed water conservation plan;

i. If the project involves new construction, substantial renovation or landscaping, an agreement to submit building and site plans to the City Manager's Aesthetic Review Team (CART) for review, and to modify the proposed design as necessary to comply with reasonable CART recommendations or conditions;

j. An agreement to make any payment in lieu of tax required as a condition of the letter of intent, or which may be required as a contingent payment in the Lease in the event that certain conditions including failure to comply with other conditions of the letter of intent occur during the time period in which the bonds are outstanding;

k. Where the project involves the acquisition of any interest in real property, an agreement to provide the City, at the time the proposed Lease agreement is submitted, an Environmental Site Assessment ("ESA"), performed by an independent consultant recognized as an expert in the area, that documents the environmental condition of the property; bonds generally will not be issued if the ESA discloses environmental conditions that might lead to monetary liability for owners or operators of the property;

l. An agreement, to be incorporated in the Lease agreement, that the applicant will use and operate the project in accordance with all applicable environmental laws and regulations, and will indemnify and hold the City harmless from any and all liabilities (other than liabilities resulting from environmental contamination primarily caused by the City's own agents or employees) arising under any environmental law or regulation;

m. An agreement to furnish copies of any annual financial audits to the City;

n. An agreement to cooperate with any annual compliance audit procedure(s) the City may adopt to monitor compliance with conditions, including any annual reports required of the applicant and any inspections of the applicant's premises or interviews with the applicant's staff;

o. A commitment to achieve and maintain its proposed employment goals, and to meet its Equal Employment Opportunity/Affirmative Action goals, during the term of the bond issue, subject to a revocation of any tax abatement or imposition of payments in lieu of taxes in the event the City Council finds that the tenant did not make a good faith effort to achieve such goals.

p. An agreement to obtain all insurance the City may require in connection with the construction, maintenance or operation of the project, or liabilities arising out of the operation of the project, including (without limitation) a performance bond sufficient to secure completion of the project;

q. An agreement that, prior to issuance of the bonds, the applicant will provide proof that all ad valorem property taxes on the project property due and owing up to the proposed date of issuance have been paid;

r. If the project is a proposed office headquarters facility, an agreement that the applicant will maintain its headquarters in the City so long as any of the bonds are outstanding and for the term of any approved tax abatement;

s. Arrangement (such as a Bond Purchase Agreement or Bond Placement Agreement) for the sale/placement of the bonds, which shall contain suitable indemnification agreements from the prospective tenant and underwriter(s) indemnifying and holding the city harmless from liabilities arising from disclosure or registration provisions of state or federal securities laws;

t. If the bonds are to be sold by public sale, an agreement that the applicant will not, while any of the bonds are outstanding, have a commercial banking relationship with the trustee of the bond issue; or, if the bonds are to be privately placed, an agreement that the applicant will not have such a relationship with the trustee of the bond issue unless the purchasers in the placement of the bonds shall first acknowledge in writing the existence of the relationship and waive any conflict that might exist as a result of such relationship.

u. If the proposed bond issue is requested for the purpose of advance-refunding outstanding IRBs previously issued by the City of Wichita upon which interest paid to bondholders is properly exempt from federal income taxation, an opinion of bond counsel or special tax counsel, prior to the issuance of the refunding bonds, that the proposed refunding will have no adverse impact upon the tax treatment of the interest paid to holders of the refunded bonds.

v. An agreement that prior to the issuance of the bonds, the prospective tenant will obtain a suitable commitment for a policy of title insurance insuring the title of any real property conveyed to the City in connection with the financing.

w. An opinion of counsel participating in the preparation of the preliminary official statement and the official statement (which may be bond counsel, tenant's counsel, or the underwriter's counsel), to the effect that such counsel, after reasonable investigation, is of the opinion that the disclosure therein do not contain any untrue statements of material fact, and do not omit material facts necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading.

7. Letters of Intent will generally be granted for a six-month period, period although the City Council may elect to grant a letter of intent of up to three years' duration where the project to be financed is such that it cannot be completed in a period of less than one year. The City Council may grant an extension of an outstanding letter of intent, if warranted. Such extensions will normally be considered for a period of six months at a time, but may be considered for a period of up to one year upon a showing of good cause therefor. Once a letter of intent has been approved for issuance of tax exempt bonds subject to volume cap allocation, the Director of Finance or his or her designee may sign on behalf of the City, as Issuer's Spokesperson, any necessary request or application for volume cap allocation, or any request for carryover or extension of such an allocation, provided the same does not exceed the remaining period covered by the letter of intent (and any extensions thereof).

B. Procedure for Issuance of Bonds

Bonds with respect to which a letter of intent has been granted and remains in effect will be issued following proof of satisfaction of all conditions of the "letter of intent" and following approval of the bond documents, including closing certificates, by the City Attorney's Office and approval by the City Council (through approval and publication of the bond ordinance). Procedures to be followed for first reading, second reading and closing of the bond issue will generally be as follows:

1. **FIRST READING:** The City Council will conduct a public hearing and consider the bond ordinance on first reading after the submission of the following documents to the Economic Development Office and City Attorney's Office of the City of Wichita, which shall occur at least two weeks prior to the first reading by the City Council.

a. The proposed Lease, Trust Indenture and Bond Purchase or Bond Placement Agreement, and the proposed bond ordinance for consideration by the City Council. The proposed Bond Purchase Agreement or Bond Placement Agreement will require the underwriter to identify the jurisdictions in which the underwriter proposes to sell or place the bonds, and if any of the bonds will be sold outside the State of Kansas will include a covenant by the underwriter to obtain and provide, at or prior to the closing of the bond issue, an opinion or other written assurance from the underwriter's legal counsel (including any supplemental opinions or rulings which underwriter's counsel may require from any local underwriter's counsel or any state or territorial securities commission or similar agency in any such jurisdiction(s) to the effect that the sale or placement of the bonds in each and every such jurisdiction will be conducted in accordance with all securities laws and regulations applicable therein

b. Any lease guarantee statements previously agreed to and/or required by the letter of intent.

c. A substantially final draft of the preliminary official statement prepared by the bond underwriter, circulated to the Economic Development Office and the City Attorney's office at least two weeks prior to the date upon which it is to be approved and "deemed final" by the tenant company within the meaning of SEC Rule 15c2-12.

d. An Administrative Service Fee Agreement for approval by the City Council.

e. The form of the proposed written legal opinion from bond counsel, which will be executed and delivered at closing, to the effect that the bonds are valid and binding special obligations of the Issuer in accordance with their terms. The form of opinion will also reflect the proposed content of the opinion to be delivered by bond counsel at closing concerning the proper treatment of interest on the bonds for federal and state income tax purposes, and will fully and accurately disclose bond counsel's role in the preparation of the official statement

f. The informational statement required by law to be submitted to the Kansas Board of Tax Appeals, which shall be prepared and submitted to the City Attorney's Office (with all exhibits and attachments) for signature by the City Clerk or Deputy City Clerk of the City of Wichita.

g. If the bonds are to be issued as bonds upon which the interest paid to bondholders is intended to be properly treatable as interest exempt from federal income taxation, a copy of an appropriate Tax Equity and Fiscal Responsibility Act (“TEFRA”) publication notice to be timely published in the official newspaper of the City.

h. For all bond issues (whether or not subject to TEFRA notice requirements) a copy of an appropriate Notice of Public Hearing which bond counsel shall publish in the official newspaper of the City at least seven days prior to the date of first reading.

The bond ordinance shall be submitted to the City Attorney’s Office and the City’s Economic Development Office in final form, with all Series designations, names of parties, and the amount(s) of bonds to be issued, at least eight (8) calendar days prior to the date on which the City Council is to consider the ordinance on first reading.

2. SECOND READING: Following the regular or special meeting at which the City Council conducts the public hearing on the issuance of the bonds and considers the bond ordinance for first reading, the City Council will ordinarily consider the ordinance on second reading, and may approve it, at its next regular meeting or in appropriate cases at a special meeting properly noticed for such purpose. Prior to City Council consideration of the bond ordinance on second reading, the following conditions shall have been satisfied:

a. All conditions of the letter of intent which are to be satisfied at a time prior to approval of the bond ordinance shall have been satisfied;

b. The Lease, Indenture, Bond Purchase or Bond Placement Agreement, and final Official Statement shall have been submitted to the City Attorney’s Office and the City’s Economic Development Office, in final form, including complete and accurate information as to the legal description of the project property and the interest rates, maturities and provisions for mandatory redemption and optional redemption of the bonds;

c. The City shall have received any other statements or documents which require approval or execution by city staff or the City Council, or statements or documents that pertain to full disclosure of bondholders.

3. CLOSING AND ISSUANCE OF THE BONDS: Prior to closing and issuance of the bonds, the following shall have occurred:

a. The bond ordinance shall have been approved by the City Council, executed by the Mayor (or Vice Mayor acting in the absence of the Mayor), attested by the City Clerk or Deputy City Clerk, and published in the official newspaper of the City. None of the principal bond documents, including the Lease, Indenture and Bond Purchase or Bond Placement Agreement will be executed and delivered on behalf of the City until the bond ordinance has been duly approved, executed, attested and published.

b. All documents other than the ordinance which are to be executed and delivered on behalf of the City shall have been delivered to the City Clerk's Office for processing; no documents are ever to be delivered directly to the Mayor's Office for execution.

c. All conditions required by the letter of intent to have been performed prior to issuance of the bonds shall have been performed.

d. All conditions of the letter of intent which are to be performed after closing, or performed or maintained throughout the term of the bond issue shall have been provided for under the bond documents, through covenants of the tenant and/or contractual rights of the City as Issuer, or otherwise.

e. All conditions required for authentication and delivery of the bonds under the Indenture shall have been fulfilled.

f. All conditions to be met at or prior to closing under the terms of the Bond Purchase Agreement or Bond Placement Agreement shall have been fulfilled.

g. All certifications, documents and opinions required under the Lease, Indenture, and Bond Purchase Agreement or Bond Placement Agreement as a condition of closing shall have been received by the City.

h. Bond Counsel shall have received from the State Board of Tax Appeals an appropriate letter acknowledging receipt of, and approving, the Information statement, and authorizing the issuance of the bonds on the closing date.

i. Any necessary Application for Private Activity Bond Allocation shall have been approved by the Kansas Department of Commerce and Housing.

j. The City shall have received all statements or documents that would need to be reviewed by the City Attorney before the City Attorney could give the City Attorney's legal opinion.

This resolution shall be subject to periodic review by the City Council for changes to reflect current economic conditions or revisions in City Council Policy.

The Resolutions of August 7, 1984, pertaining to the matters addressed herein, is hereby repealed.

ADOPTED this _____ day of _____, 19____.

Bob Knight, Mayor

ATTEST:

Pat Burnett
City Clerk

(SEAL)

Approved at to Form:

Gary E. Rebenstorf
Director of Law